

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Bay State Gas Company)))	D.T.E. 01-81
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**MASSACHUSETTS DIVISION OF ENERGY RESOURCES' RESPONSE TO ATTORNEY
GENERAL'S MOTION TO REOPEN RECORD TO ADMIT POST-HEARING
EVIDENCE FOR GOOD CAUSE**

Background

On November 15, 2002, the Attorney General filed a Motion to Reopen the Record to Admit Post-Hearing Evidence for Good Cause ("Motion") in the pending Bay State Gas Company Petition to Establish a Gas Cost Incentive Mechanism ("GCIM"). On November 18, 2002, the Department requested that parties to the GCIM proceeding submit their responses to the Motion no later than November 20, 2002.

Response and Comments

The Massachusetts Division of Energy Resources ("DOER") agrees that it would be appropriate and useful for the Department to reopen the record in the GCIM proceeding to allow the Department to consider a limited amount of additional evidence. The Attorney General has requested that the Department admit into the record as evidence the report prepared by the staff of the Federal Energy Regulatory Commission entitled: *Initial Report On Company-Specific Separate Proceedings and Generic Reevaluations; Published Natural Gas Price Data; and Enron Trading Strategies* ("Staff Report" or "Report"), as well as a November 12, 2002 article published in the Wall Street Journal.

The Staff Report was prepared and filed at the Commission's direction, as part of the proceeding entitled: *Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices*; FERC Docket No. PA02-2-000.¹

DOER believes that the Staff Report raises concerns about market integrity that could unduly alarm consumers, were the Report not admitted into evidence and carefully reviewed by the Department. For this reason, DOER supports admitting the Report.

DOER's support for this action by the Department is circumscribed by several *caveats*. First, the Department should also admit into evidence contemporaneously with the Report the responses to the Report filed by the independent publishing firm concerning the characteristics of price reporting. Second, the Department should not admit secondary sources of information, such as the Wall Street Journal article proposed as Exhibit AG-5 in the Attorney General's Motion, nor should the Department reopen the record for additional testimony. Third, the Staff Report should be viewed in the context of the proceeding for which it was prepared and should only be given the weight in this proceeding appropriate to its relevance to this proceeding.

The Department Should Also Admit the Comments of the Independent Publishing Firm Filed in Response to the Staff Report

DOER recommends that the Department also allow the admission, contemporaneously with the Staff Report, of the *Comments of Platts on FERC Staff Report*; FERC Document Number 200210095007 (October 9, 2002); Docket No. PA02-2-000; filed in response to the Staff Report ("Comments"). A copy of the Comments is attached here and DOER offers it as

¹ On February 13, 2002, the Commission issued an order directing the staff to undertake a fact-finding investigation into possible market manipulation in the California electric energy and natural gas markets, including the

Post-Hearing Exhibit DOER-1. Unlike the Wall Street Journal article, the Comments provide independent, original, and authoritative information about how published price data is compiled, reviewed, and validated. DOER submits that such original information is relevant to the issues being considered here, and would inform the Department's considerations. The Staff Report acknowledges the importance of the information provided by Platts, stating that, "Platt's responses were extremely valuable in Staff's understanding and assessment of the price indices." Staff Report at 45. The Department should avail itself of that value by admitting the Comments along with the Staff Report.

The Department Should Limit the Admission of New Evidence to the Commission Report and the Comments Filed by the Publishing Company

DOER disagrees with the Attorney General's suggestion that the November 12, 2002 Wall Street Journal article is relevant to the GCIM proceeding and objects to the request that it be admitted into the record. The Staff Report, compiled after significant investigation and review of information, is the best evidence on the topic of possible price manipulation. The Wall Street Journal article is merely a secondary source that reports on the fact of the Staff Report. It has no independent, intrinsic evidentiary value.

The Staff Report Must Be Viewed in the Context of a Discrete Investigation

Should the Department reopen the record and admit the Staff Report, DOER urges the Department to consider the Report in its entirety and not limit its deliberations to selected excerpts. While the Report raises legitimate questions about the validity of published gas prices and possible price manipulation by market participants with an incentive to misreport prices,

those questions are being raised within the context of a specific investigation of California markets during a discrete period of time.² For example, the Report states:

Staff concludes that the reported spot prices for natural gas at California delivery points are *not* appropriate for use in computing the mitigated market-clearing price and subsequent refunds in the California refund proceeding. Staff makes no conclusions as to whether these reported prices are inappropriate for structuring contractual provisions between two sophisticated parties bargaining at arms-length. [emphasis added] Staff Report at 4.

There is no question that the validity of published prices for California spot markets during 2000 – 2001 is a serious concern in the California refund proceedings pending before the Commission. However, there is nothing in the Staff Report to suggest that this concern is applicable or transferable to other markets or regions. There is no suggestion that the Report has any relevance to the validity of published natural gas prices in other markets or should be interpreted that way.

The Staff Report was specifically compiled as part of a Commission fact-finding investigation into possible company misconduct that may have resulted in distorting electric and natural gas markets in California, beginning in January 2000. The Staff Report was released in August 2002 as an initial report,³ in order to make recommendations, on an accelerated schedule, to address the refund formula to be used in the Commission's California refund proceedings. The data examined by the staff for the Report, and the resulting

2. The Commission did not initiate its investigation because it questioned the validity of using published price data to set prices for the natural gas industry. The Staff Report was compiled in conjunction with the investigation, for market manipulation and unethical trading conduct, of specific market participants; Portland General Electric Company, Enron Corporation, El Paso Electric Company, and Avista Corporation.

3. The Commission, in the Fact Sheet released with the Staff Report, stated that the Staff Report was an initial effort and would be reviewed and followed up upon by the full Commission, who would ultimately issue a Final Report and

recommendations, are based on staff findings of possible mis-reporting of data to independent publishing firms concerning California delivery point natural gas spot prices. The staff inquiry was designed to respond to specific market issues, limited in scope, time, and company activities to the California markets. While these parameters address the issues being raised by the Commission in its investigation of Enron and others' market manipulation in California, they do not consider, and were not intended to consider nor to characterize, price reporting in other markets, the behavior of other companies, or the integrity of published natural gas prices outside of California.

The Report concluded that the validity of published prices posed:

[A] particular problem for California delivery points price data, given the incentive to over-state prices in the West and in California. It is Staff's belief that this is one of the factors that makes the published natural gas price data for California delivery points inappropriate for setting the MMCP in the ongoing California refund proceeding. Staff Report at 50 – 51.

Conclusion

DOER believes that the Department should reopen the record and admit both the Staff Report and the Comments. However, DOER urges the Department to limit the additional post-hearing evidence to those two documents, and not to reopen the proceeding for further hearings. DOER also recommends that the Department not reopen the record to admit evidence based upon secondary sources.

Finally, DOER emphasizes that the Staff Report and the Comments should be considered within the context of a Federal Energy Regulatory Commission investigation into specific circumstances that may have resulted in market manipulation of mitigated market-clearing prices for natural gas at California delivery points during 2000 and 2001 and not as part of a generalized inquiry into the use or reliability of published gas indices.

Respectfully submitted,

Carol R. Wasserman
Deputy General Counsel
Massachusetts Division of Energy Resources